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In re Application of

NOV 09 2007

Aguinaldo, et al.

OFFICE OF PETITIONS

Application No. 10/820,467

: DECISION ON PETITION

Filed: March 30, 2004

Attorney Docket No. 067461-5104-US02

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed October 2, 2007.

The petition is **granted**.

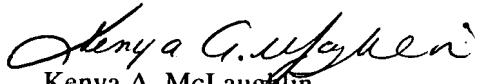
This application was held abandoned December 16, 2006, after no reply was received to the non-final Office action mailed September 15, 2006. The notice set forth a shortened statutory period of reply of three months from its mailing date. No response was received within the allowable period and the application became abandoned on December 16, 2006. A Notice of Abandonment was mailed March 22, 2007. The instant petition was filed on October 2, 2007. Petitioner maintains that the restriction/election requirement was never received and provides a copy of the relevant docketing calendar as proof of the same.

Section 711.03(c)(II) of the *Manual of Patent Examining Procedure* ("MPEP") provides that in order to establish non-receipt of an Office action so as to prove that the imposition of a holding of abandonment is improper, petitioner must: 1) provide a statement to the Office indicating that the Office action was not received by petitioner; 2) include in the statement an attestation to the fact that a review of the file jacket and docket records maintained by petitioner indicates that the Office action was not received; and 3) provide a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

Petitioner has met the burden of proof as established by Section 711.03(c)(II) of the MPEP. The holding of abandonment is, therefore, withdrawn.

The application file is being forwarded to Technology 1600, GAU 1646 for further processing that may include remailing the non-final Office action and resetting of the period for reply.

Questions concerning this decision should be directed to the undersigned at (571) 272-3222.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions